IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8978 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAHEJADHUSSAIN ALIAS SAJIDHUSSAIN S/O SAMSUDDIN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 28.4.2003

passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 28.4.2003.

2. From the grounds placed on record and served upon the petitioner, it appears that the detaining authority took into consideration the fact that 7 offences came to be registered against the detenu under Sections 379 and 114 of the Indian Penal Code within the span of period from 17.01.2003 to 19.4.2003 for stealing vehicles. The detaining authority also took into consideration two statements of two witnesses recorded by the proposing authority on 23.4.2003 and verified by the detaining authority on 24.4.2003 revealing the incidents of 10.2.2003 and 17.4.2003 whereby headstrong propensity of the petitioner was disclosed by the witnesses. Placing reliance upon those statements and the offence registered, the order impugned came to be passed.

3. Learned Advocate Mr.Amrish K. Pandya for Ms. Krishna U. Mishra for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority, which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter while passing of the order. In the ground mentioned, the detaining authority has clearly concluded that the petitioner was in judicial custody when the order of detention came to be served upon the petitioner. The detaining authority observed that in the said offences, the petitioner was likely to move bail application, and on such bail being granted, the petitioner was likely to be indulged in illegal activities. In this regard, the affidavit-in-reply filed by the detaining authority, in para - 10, the detaining authority mentioned that after proper application of mind to the material placed before him, facts and circumstances of the case as well as the legal provisions applicable to the facts of the case, the detaining authority passed the above said order. The question is

whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to move the bail application, and that on moving such bail application, the petitioner was likely to be released on bail. Apart from the legal provisions, the law as stands today, requires that there should be some cogent material before the detaining authority to come to the subjective satisfaction as to likelihood of the petitioner to be released on bail. Learned Advocate for the petitioner makes a statements that the petitioner is in judicial custody today even, and has not moved any bail application so far. The facts of the case are, therefore, squarely covered by the decision of the Apex Court in the case of AMRUTLAL AND OTHERS vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 28.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair